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Weyerhaeuser

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November 17, 2000

Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of the Secretary
NOV 17 2000
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Public Record

Re: STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

Dear Mr. Secretary:

Enclosed herewith for filing please find 25 copies of Weyerhaeuser Company's comments in the above mentioned proceeding.

Also enclosed is an electronic copy of this letter and the said comments on 3.5 inch IBM compatible floppy diskette in a WordPerfect 7.0 compatible format.

Yours truly,

John B. Ficker
Logistics Development Manager

Encls.

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES DEPARTMENT OF TRANSPORTATION

Ex Parte 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

SUBMISSION OF
WEYERHAEUSER COMPANY

DATE: NOVEMBER 17, 2000

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BEFORE THE
SURFACE TRANSPORTATION BOARD
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Ex Parte 582 (Sub-No. 1)

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SUBMISSION OF
WEYERHAEUSER COMPANY

Introduction

My name is John B. Ficker. I am employed by Weyerhaeuser Company as its Logistics Development Manager. My business address is: Weyerhaeuser Company, PO Box 9777 Federal Way, WA 98063-9777. I am familiar with all of Weyerhaeuser's facilities and its transportation requirements. I have worked in the transportation industry for thirty years. I have worked for Weyerhaeuser since 1986. For the first four years of my employment, I was Southern Transportation Manager. In that position, I was responsible for transportation from and to eleven (11) Weyerhaeuser manufacturing facilities and forty (40) distribution centers east of the Rocky Mountains. In 1990, I assumed my current responsibilities, which include reviewing Weyerhaeuser's transportation agreements, determining whether they comply with applicable regulations and statutes, and representing Weyerhaeuser before regulatory agencies. I am a registered practitioner before the Surface Transportation Board and am authorized to represent Weyerhaeuser before federal and state regulatory bodies and present this statement on behalf of Weyerhaeuser.

Background -- Weyerhaeuser is a large user of rail

Weyerhaeuser is a multi-plant forest products company with facilities across North America. Our 1999 annual sales were over $13 billion. We manufacture, distribute, and sell logs, woodchips, lumber, plywood, particleboard, hardboard, oriented strandboard, woodpulp, paper, pulpboard, shipping containers, chemicals, and related products. We are engaged in major recycling efforts across North America and in 1999 moved over 4 million tons of recycled paper. We own and operate large mill complexes in Alabama, Georgia, Mississippi, Kentucky, West

Virginia, North Carolina, Oklahoma, Oregon, Washington, and Wisconsin, and the Canadian provinces of British Columbia, Alberta, Saskatchewan, Ontario and New Brunswick. We have numerous packaging plants and distribution facilities across the United States and Canada. We also own and operate five Class III shortline common carrier railroads.

Weyerhaeuser is a significant user of rail transportation services in both the United States and Canada, and as such is familiar with the operations and regulatory framework of both countries. Transportation costs are a significant portion of our products' delivered prices. Between forty percent (40%) and fifty percent (50%) of our finished products move by rail. In 1999, our rail bill will exceed three hundred million dollars ($300,000,000). Because of their shipping characteristics and the locations of our key markets, many of our products have limited modal options and rely on dependable, cost-efficient rail transportation. Thus, the structure, competitiveness, and efficiency of the rail industry directly affects our daily and long-term ability to move our products to the marketplace.

We are certain that the Board has noted the recent letter from over 260 CEOs of major American corporations addressed to Senators McCain and Hollings expressing their concern about lack of competition within the rail industry. While this letter was addressed to Congress, the Board has a chance in this proceeding to create rules that will address some of the concerns expressed by America's leading CEOs in their letter.

General Comments on the Proposed Rules

Weyerhaeuser appreciates the Boards efforts to undertake a full review of the current rail merger policies and we submitted comments in the initial proceeding in May. Our earlier comments focused on the critical importance of rail-to-rail competition as a basis for the Board's proposed rules. Now, having reviewed the Board's October 3, 2000 Notice of Proposed Rulemaking we offer these additional comments.

Weyerhaeuser views these rules as a potential "good start". However, much more substance is needed to address shippers' need for meaningful and effective rail-to-rail competition. The Board's proposed rules express admirable theory, but provide little implementable substance. It must be kept in mind that once a merger transaction is completed it is almost impossible to "put the genie back in the bottle"; therefore, the rules must have significant and enforceable substance, because otherwise the rules offer only fodder for academic musing.

Keeping in mind the genie in the bottle situation, we suggest the Board adopt rules which start with the acknowledgement that today all Class I mergers are anti-competitive. Therefore, the rules must place a heavy burden of proof on the applicants to establish a compelling reason to further decrease rail-to-rail competition. Merger approval must impose significant financial or operational penalties on the applicants if they fail to deliver on the benefits promised by the merger. The rules should include provisions which will insure that applicants retain sufficient employees to respond to the shipping public during the transition period. The Board must also impose real competitive conditions in the approving of any merger which mitigates the inherent anti-competitive nature of any merger. These should include the opening of all industries within terminal facilities to any carrier providing service to that terminal whether they are a part of the merger proceeding or not. Any approval should insure that all existing gateways remain open, not only from an operational standpoint, but from a rate and service perspective as well. Finally, the rules must provide shippers with procedures which ensure swift and significant redress for a merged carrier's failure to meet the Board's conditions or provide the promised benefits.

Promoting and Enhancing Competition

In its initial comments, Weyerhaeuser suggested that the Board adopt a regulatory framework similar to the one that currently exists in Canada. We believe this is still appropriate but we believe additional items must be included in the new merger rules, as well. The final merger approval framework should include the following components; terminal access (interswitching), maintenance of gateways and interchange prior to a merger, an arbitration process to resolve disputes that is swift (final offer arbitration), and service performance penalties for a merged carrier that fails to meet the service levels outlined in pre-merger service plan. Each of these will be discussed, below.

- **Terminal Access:**

We again urge the Board to simply adopt the same standards in the United States that apply in Canada. This Canadian system, called Interswitching, will increase competition between railroads for traffic at a substantial number of locations throughout the United States. If necessary, the interswitching costs could be established yearly by the Board and consistently applied across the country. As in Canada, the interswitching zones should begin where competing lines intersect and expand outward in mileage bands. This will provide competitive

rail service to many industries located outside of current terminal areas. Some additional study would be necessary because many of the current terminal areas were established over 50 years ago and no longer reflect the true "commercial" area of a location.

An important difference between US conditions and Canada requires imposition of one distinction. The Canadian remedy itself was created before the Canadian Railroads had shed low-density lines. They had no experience with shortlines and regional railroads, nor was there any need to protect those railroads. Therefore, to be effective in the United States the application of this remedy, the terminal access zone rules, should apply only to Class One railroads and not to regional railroads or shortlines.

- **Maintenance of Gateways:**

In any merger proceeding between Class I carriers the Board must require that all existing gateways remain open, from an operational as well as an economic standpoint. The elimination of gateways and the creation of bottlenecks from previous mergers has reduced rail-to-rail competition and this must not be allowed to continue in future mergers. In fact, the Board should consider a "backward" analysis to see if gateways eliminated in past mergers should be re-established as conditions to new, proposed mergers, where applicable.

- **Arbitration Process:**

The Board's formal complaint procedures are too expensive, time consuming and inflexible to be useful in resolving service and competition issues for shippers. There must be a simple and speedy process for carriers and shippers to resolve their commercial disputes while it still matters. In Canada, a proven method is known as "Final Offer Arbitration" (FOA). FOA provides for the appointment of an arbitrator to resolve disputes between shippers and railroads. The dispute must be resolved within 60 days and the decision of the arbitrator is final. We envision this system would be somewhat similar to the baseball style arbitration which the ICC established when it de-prescribed car per diem. An FOA process is far more responsive to the real time resolution process demanded by the marketplace.

- **Service Performance Penalties:**

Living through the imposed trauma of rail service disruptions resulting from recent mergers has been the bane of all rail shippers and one of the sources of dissatisfaction with the Board's

processes. The additional costs resulting from Class I mergers were not limited to product movement, but include innumerable hours spent merely trying to determine the status and location of shipments. These costs are a significant toll on both shippers and railroads. Efficiencies and market opportunities were also lost simply because of the unreliability of the nation's rail system during these periods.

The Board must insist that any future mergers have reasonable and realistic penalties on the merged carrier for such failures. These penalties could take several forms, including specific reasonable financial penalties and substitute service. The shipper would have the discretion of asking for specific financial penalties outlined in the merger or the implementation of the rules in Ex Parte 628. For the financial penalty, the shipper would file for this relief and the carrier would have 30 days to pay the claim. The short time period would make the penalty effective in incentivizing carriers as well as providing timely economic relief to impacted shippers. In order to make this penalty system effective and timely, the service standards subject to penalty should be specifically set by the board as conditions to any merger approval.

Inasmuch as shippers only want (and our economy demands) reasonable rail service from their carriers, if a failure persists, the regulations should call for the immediate implementation of the rules of Ex Parte 628, with only a threshold trigger. This would allow the shipper to receive service from an alternate carrier, alleviating the overall costs of the service disruption and reducing the carrier's service failure penalty.

Transnational Mergers

Weyerhaeuser agrees with the Board that any merger of a transnational nature (between the United States and Canada or the United States and Mexico) must include a complete review of the data on both sides of the border. Without viewing this in a holistic, systemic, manner the Board would have an incomplete view of the potential impact of any merger and the impact of any downstream effects.

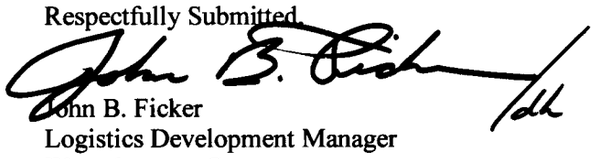
Summary

The Board's proposed rules assert the laudatory goal of protecting the limited remaining rail-to-rail competition, but without the inclusion of specific remedies in the rules they will provide little to achieve that goal. We urge that these measures be given careful consideration for inclusion in the Board's final rules.

Weyerhaeuser also is familiar with the submissions of the National Industrial Transportation League, the American Forest & Paper Association and the Alliance for Rail Competition and support the competitive enhancement proposals in each of their submissions.

The Board is at an important juncture in determining future transportation policy relating to railroads to insure that future mergers serve the public interest. We firmly believe that effective rail-to-rail competition is in the public interest, and that furthermore, it is required for an efficient, innovative and effective rail system in North America. We sincerely hope these comments will assist the Board in formulating a forward-thinking and effective rail merger policy. Weyerhaeuser appreciates the Board's efforts to find workable merger guidelines for the 21st century.

Respectfully Submitted,



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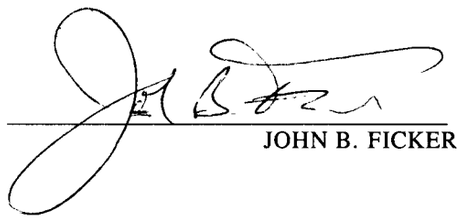
CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2000, I served the foregoing document, Submission of Weyerhaeuser Company on all parties of record by first-class, U.S. mail, postage prepaid.



JOHN B. FICKER